

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 99-97
 :
 v. :
 :
 LAMONT RHYM :

GOVERNMENT'S MOTION AND MEMORANDUM FOR
HEARING AND DEFENDANT'S PRETRIAL DETENTION

The United States of America, by Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania, and Richard A. Lloret, Assistant United States Attorney, moves for a detention hearing¹ and pretrial detention of the defendant, LAMONT RHYM, pursuant to 18 U.S.C. §3142(e). The government seeks this Order because no condition or combination of conditions will reasonably assure the defendant's appearance as required or the safety of the community.²

¹ Under 18 U.S.C. §3142(f)(1)(C), a judicial officer shall hold a detention hearing upon motion of the government in a case, as here, which involves any felony, if the defendant has previously been convicted of two or more state drug distribution charges that would have carried a maximum of 10 years or more imprisonment if they had been charged federally. 18 U.S.C. § 3142(f)(1)(D). RHYM has been convicted of two such offenses.

² The government must prove by a preponderance of the evidence that no conditions of release reasonably will assure the defendant's appearance or prove by clear and convincing evidence that no conditions of release will assure the safety of the community. United States v. Himmler, 797 F.2d 156, 161 (3d Cir. 1986).

I. STATEMENT OF FACTS

A. Probable Cause And The Evidence In This Case

In support of this motion, the government makes the following representations and proposed findings of fact:

1. There is probable cause to believe that on November 24, 1998, LAMONT RHYM committed the offense of knowingly possessing a firearm in or affecting interstate commerce after having been convicted of a crime punishable by more than one year's imprisonment.

2. The evidence in this case is strong and consists of eyewitness testimony of two police officers.

3. The evidence shows that the defendant possessed a loaded semi-automatic pistol with an obliterated serial number while on bail for a pending state charge, after having been convicted on at least 4 prior occasions, two of which were for drug distribution felonies.

4. The nature and strength of the evidence against the defendant demonstrates both that the defendant is a high risk not to appear and that he poses a danger to the community.

B. Penalties

1. Defendant, RHYM, is charged with a violation of 18 U.S.C. § 922(g)(1). He faces a statutory maximum of 10 years imprisonment, a \$250,000 fine, 3 years of supervised release and a \$100 special assessment.

2. Based on RHYM's prior record, the fact that the weapon had an obliterated serial number and the fact that the defendant

was on bail when the offense occurred, the defendant faces a likely guidelines incarceration range of at least 78-97 months, under U.S.S.G. § 2K2.1³. Accordingly, there is a significant incentive for the defendant to flee to avoid prosecution and incarceration.

C. Prior Criminal Record/Attendance At Court Proceedings

The defendant has a significant history of criminal convictions:

<u>Court No.</u>	<u>Charge</u>	<u>Sentence</u>	<u>Sentence</u>
CP8812-2916	Manuf., del., poss. intent to deliver controlled substance	Max. 3 years	10/15/91
CP9004-009	Rec. stolen property	2 yrs. prob.	10/15/91
CP9004-2163	Manuf., del., poss. intent to deliver controlled substance	Max. 3 years	10/15/91
MC9309-0317	Unauth. use auto	Less than 1 year prob.	10/15/93

In addition, at the time of his arrest for possession of a firearm on November 24, 1998 the defendant was on pretrial release from state charges that were ultimately dismissed.

D. Ties To The Community

1. The defendant reports he is currently unemployed. The defendant has reported at least 8 addresses since 1986 (all in Philadelphia unless otherwise noted): 100 Kenmark Road, Newark,

³ If U.S.S.G. § 2K2.1(b)(5) is applied, because defendant's offense involving a gun constituted a separate offense under state law, the defendant's guidelines incarceration range could be as high as 121-151 months, which would exceed the statutory maximum of 10 years (120 months).

DE (reported on his arrest on November 24, 1998), 5440 Baltimore Avenue (arrested there), 5426 Baltimore Avenue (Driver's license), 1312 North 51st Street (wife's address reported on protection from abuse order), 1810 S. 55th Street (arrested there) 2716 Eyre Street, 2715 West Erie Street, and the current address where he was required to stay by state pretrial services, 664 North 34th Street. He reported that his fiancé, Crystal Scott, lives at 136 North 62nd Street. While RHYM appears to have some family or social ties to the community, his lack of a stable address coupled with his unemployment strongly suggest that these ties, such as they are, exert no compelling influence on him. The legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

2. Certainly, any ties to the community in this instance have not served to prevent the defendant from endangering the community by carrying a loaded firearm while on bond and facing trial for residential robbery and aggravated assault charges⁴. Where a defendant has previously violated the terms of his pretrial release in so obvious and dangerous a fashion, the Court should be very reluctant to let the defendant loose on the

⁴These charges were ultimately dismissed when the Commonwealth's witnesses failed to appear.

community again. The risk to the community is apparent, and defendant's ties to the community are irrelevant to this prong of the analysis under 18 U.S.C. §3142.

E. Rebuttable Presumption

There is no rebuttable presumption in favor of detention in this case.

II. ARGUMENT

There is probable cause to believe the defendant was carrying a loaded semi-automatic pistol while on pretrial release, having been previously convicted of at least 2 felony drug distribution charges. The case against the defendant is strong. Defendant's ties to the community are feeble. The safety of the community is clearly jeopardized by those who go about armed, not only in violation of the law but in violation of the terms of their pretrial release. The facts of this case strongly demonstrate that the defendant was willing to conduct himself in obvious violation of a specific court order, i.e., his pretrial release order in the state system. There is a high risk that he will continue to conduct himself in this fashion despite the existence of a court order commanding him to do otherwise. The defendant faces years of incarceration in a federal penitentiary, with a correspondingly high incentive to flee, if placed on bond or home detention with electronic monitoring.

Only 24 hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute, 18

U.S.C. §3142(c), are unlikely to ensure that the defendant will not flee or resume his criminal activity. The defendant should be detained without bond through the course of this case.

II. CONCLUSION

For the reasons stated above, the United States respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

MICHAEL R. STILES
United States Attorney

J. HUNTLEY PALMER
Assistant United States Attorney
Chief, Guns & Arson

RICHARD A. LLORET
Assistant United States Attorney

Date: February 26, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing to be served by first-class United States mail, postage prepaid, upon the following:

Rossman Thompson, Esq.
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Richard A. Lloret
Assistant United States Attorney

Dated: August 11, 2003